

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

ELMER RODRIGUEZ,

Plaintiff

V.

**ELIZABETH NICHOLOS and
ARAMARK COMPANY,**

Defendants

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CIVIL NO. 1:12-CV-0629

(Judge Rambo)

(Magistrate Judge Smyser)

MEMORANDUM

Before the court is a May 24, 2012 report of the magistrate judge (doc. 11) to whom this matter was referred in which he recommends that the amended complaint be dismissed for failure to state a cause of action. The amended complaint was filed pursuant to 42 U.S.C. § 1983 alleging a violation of the Eighth Amendment of the United States Constitution. The amended complaint was addressed by the magistrate judge pursuant to 28 U.S.C. § 1915(e)(2). After being given an extension of time to file objections to the report and recommendation, Plaintiff filed a document entitled “Opposition Objection” and, attached thereto, an amended complaint (doc. 17). This document will be deemed to be objections to the report and recommendation.

The objection is a reiteration of the first amended complaint. Plaintiff claims that Warden Nicholas and Aramark Company were deliberately indifferent by inflicting cruel and unusual punishment and pain when they served a food tray on which is alleged to have been a mouse tail. Plaintiff has alleged a single instance of finding an alleged contaminant on his food tray. He has not alleged that this was part

of a pattern, nor that it was an act done with deliberate indifference to the plaintiff's health and safety.

Plaintiff has further not shown that Aramark, the food supplier, had a custom or policy of supplying or serving contaminated food. The fact that the Warden directed a plan of action be taken by Aramark based on Plaintiff's complaint (*see* doc. 17, Ex. C) does not establish that an Eighth Amendment violation occurred. Plaintiff's claims of deliberate indifference are conclusory and are not supported by the facts. An appropriate order will be issued.

s/Sylvia H. Rambo
United States District Judge

Dated: September 6, 2012.

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<p>ELMER RODRIGUEZ,</p> <p style="text-align: center;">Plaintiff</p> <p style="text-align: center;">v.</p> <p>ELIZABETH NICHOLOS and ARAMARK COMPANY,</p> <p style="text-align: center;">Defendants</p>	: : : : : : : : : : :	<p>CIVIL NO. 1:12-CV-0629</p> <p>(Judge Rambo)</p> <p>(Magistrate Judge Smyser)</p>
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